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No. 80-1015

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

WALTER ASCHER,

Petitioner,

vs.

STATE OF ILLINOIS,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Illinois

REPLY BRIEF

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R E P L Y B R I E F

The Petitioner, Walter A. Ascher, in reply to the Respondent's answer, says:

I

PROCEDURE

A State Court of last resort which relies upon the thinnest veneer of procedural irregularity, (R. Br. 7-8) in the teeth of a charge of denial of due process, can be considered more inclined to deny that process. At least its reliance on that veneer is prima facie evidence of its self doubt.

In any event, the irregularity does not exist. The Respondent says:

1. Petitioner violated subsection 1(f) of this Court's rule 21 by failing to set out "verbatim" the state court rules "which the case involves". (R. Br. 7) These are Illinois Supreme Court Rules 704, 708 and 709, plus two state statutes. (id.)

This case does not "involve" those rules and laws. The resolution of this issue is not concerned

with those rules. They provide for a due process hearing. It was the chairman who converted this adversary procedure into an "inquiry". (unilateral investigation) by his ukase, at trial, denying cross examination. (R. 358) Neither statute referred to has relevance to the due process issue. Thus, they are not "involved" in the context as used in Subsection 1(f), since it is not necessary to construe them in the disposition of this issue. They are involved only to the extent that the Respondent has injected them for its procedural ploy.

2. Nor is subsection 1(k) (ii) involved. (R. Br. 8) The Report of the Character and Fitness Committee to the Respondent Court is not one of the documents enumerated in that rule. The Respondent's Brief calls it a "decision". (R. Br. 1 a) The Court calls it, "a report with Findings and Conclusions". (R. 708(c), 73 Ill 2d). Nor is that report rendered by a court or an administrative

agency, as the rule requires. The Committee is an arm of the Court, which reports directly to the Court. (Rule 708) This report is "advisory". It has no binding effect whatever. (In re Mitan, 75 Ill 2d 118)

> "This court has the inherent power to regulate the admission of attorneys to the practice of law and to discipline attorneys who have been admitted to practice before it. . . . . This court has held that because of the nature of the proceedings before those to whom we have delegated the authority to act, we will not consider technical objections as to the practice and procedures before them, nor can such technical objections bind us or limit our authority to act. In re Czachorski; In re Yablunky (1950), 407 Ill. 111. (id., at 123-24)"

The denial of due process came from the Court solely and exclusively by order and opinion. (81 Ill 2d 473)

The distortion in supplying the report in its brief. (R. Br. 1a-11a) which is the head,

without the body, is dramatized by that act. It included the Report of the Committee, without the transacript and exhibits, which accompanied that Report to the Court. The report not only has no legal effect, but it is the springboard for the plea of denial of due process here. It is the gravamen of the Petition, because it is not based upon the evidence and the exhibits, which deny its Findings and Conclusions.

This Court should reject the ploy and look to the merits of the Petition.

II

DENIAL OF DUE PROCESS

The Petitioner raised the issue of due process in the Court below. (P. Memo pp. 11-12) In its answering brief, respondent argued that, "Ascher was not denied due process." (R. Br. 57-58) The issue Respondent raises here, is, whether a denial due process was argued in the Court below.

It was. (id.)

Respondent argues that "the hearing was complete, the procedure acquiesced in without objections, and confrontation and cross examination was supplied by having all questions desired to be put to the two adverse witnesses at the request of the Applicant asked by the Committee." (Emphasis added; R. B. 9-10) The question of the restriction to cross examine Brewer didn't arise until the last hour of the day. (R. 358) Then, Petitioner found that our opportunity to test Brewer's credibility was gone. (P. 358) In re Oliver, stresses that right of confrontation, including cross examination. 333 US 257, 273. Nor is confrontation accorded by proxy. (See, R. 358-361) for the full measure of that futility. Meaningful cross examination of Brewer could have forced an admission of his meaning of the words "clear title".

III

DUE PROCESS RELEVANT TO ADMISSION

This Court argues that the denial of due process is immaterial in admission cases. (R. Br. 15-17) It calls the character and fitness requirement, "unique". (R. Br. 15) Denial of moral character, it quotes, is a metaphysical concept. In Justice Franfurter's words the test of it is ". . .an intuition of experience which outruns analysis. . ." (R. Br. 16) That quotation of the Justice is from his concurring opinion in Schware. (353 US at 248) In that case, this Court held that: "There is no evidence in the record which rationally justifies a finding that Schware was morally unfit to practice law." (id., 353 US at 246-47), That is all that Ascher urges here.

IV

A. THE UNFOUNDED COMPLAINT.

The Respondent, in claiming evidentiary support for its Findings relies upon a complaint filed in Du Page County, in 1978. (R. Br. 20) The Committee knew that the fraud (chancery) part of that complaint had failed, when this Petitioner notified it that the case had been transferred in his motion, to the law calendar. The unfounded and factually unsupported claim of "wilfully, wantonly, fraudulently and maliciously", (See, P. Br. 10-11) are allegations in a complaint that has not as yet been brought to trial. No one should be deprived of his good reputation and his profession by allegations in a complaint. The Respondent has nothing else. (R. Br. 18-20)

B. A FEDERAL QUESTION PERSISTS.

This Petitioner is here because he has been denied due process by a denial of admission to the Illinois Bar by that state's highest court. The denial is based upon lack of character and fitness. The Petitioner proved, beyond the context of the charge,

his character and fitness. The Court had no evidence to the contrary.

Thus, little credence can be given to the court's cry that the denial of that right, is not a Federal question. (R. Br. 18) These aberrations in the Respondent's brief are all persuasive that due process was denied. For if, as petitioner pleads, he was denied a license to practice, for lack of character and fitness, without proof that he committed an immoral or illegal act, he is denied due process of law. Without citation in this court, that is a Federal question.

C. FORGERY

The Respondent belatedly here, attempts to argue immorality in fraud, and illegality in forgery. (R. Br. 2, 19, 22) The signatures signed by Petitioner were the Kaczmareks'. Mr. Kaczmarek testified for the Petitioner and was unequivocal that he had written and oral authority to sign their names at all times.

(R. 262) Moreover, the fraud of the unfounded complaint was to recover the difference in sales price between what Kaczmarek paid Freston and Brewer paid Kaczmarek. The "fraud" intended by the "forgery" statute (Ill. Rev. Stat. 1979 Ch. 38, Par. 13 (1) (a)) refers to the deed of conveyance, which Brewer has never disputed, and which is still his source of title. "No question of fraud was raised in the hearing, no finding of fraud was made." (P. Mem. p. 20) The Respondent's desperate reach for immorality or for illegality, on that basis, fails completely.

D. PETITIONER WAS NOT EMPLOYED BY ADDISON LEGAL SERVICES, AND HIS ANSWER WAS TRUE.

Counsel for the Committee during oral arguments cited two alleged additional misrepresentations Petitioner made on the questionaire. One, that the Petitioner failed to disclose that he had ever worked in a law office or had been employed by a lawyer. Petitioner has stated and the record shows that

Petitioner was never on a payroll, shared any profits or worked in a law office, and that he merely provided accounting functions for the office.

Petitioner answered "NO" to the question whether he had ever been "accused by any employer, superior, associate, customer or other person of dishonesty in connection with any employment or occupation". Here again counsel for the Committee tries to impute a wrong to petitioner by imputing an employment relationship in an arms length Real Estate transaction.

CONCLUSION

The Petitioner has committed no wrong of any kind. The Respondent uses the unsupported conclusion of "inexcusable" to cover that void, based solely upon the allegation of a civil complaint, over two years old. This Court should grant its Writ to review this unwarranted punishment.

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